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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

REGGIE D. COLE,  
Plaintiff,

v.

CITY OF LOS ANGELES et al.,  
Defendants.

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OBIE S. ANTHONY, III,  
Plaintiff,

v.

CITY OF LOS ANGELES et al.,  
Defendants.

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OBIE S. ANTHONY, III,  
Plaintiff,

v.

COUNTY OF LOS ANGELES,  
et al.,  
Defendants.

CASE NO. CV 11-03241-CBM (AJWX)  
[COLE ACTION]

CASE NO. CV 12-01332-CBM (AJWX)  
[ANTHONY CITY ACTION]

CASE NO. CV 13-07224-CBM (AJWX)  
[ANTHONY COUNTY ACTION]

[HONORABLE CONSUELO B. MARSHALL]

PLAINTIFF'S MOTION FOR PARTIAL  
SUMMARY JUDGMENT AND/OR  
SUMMARY ADJUDICATION OF  
ISSUES OF WHETHER CERTAIN  
IDENTIFIED INFORMATION  
ALLEGEDLY WITHHELD WAS  
EXCULPATORY AND MATERIAL  
UNDER THE STANDARDS OF *BRADY*  
*V. MARYLAND*; MEMORANDUM OF  
LAW IN SUPPORT THEREOF  
[FILED CONCURRENTLY WITH  
SEPARATE STATEMENT OF  
UNDISPUTED FACTS;  
DECLARATIONS; EXHIBITS;  
(PROPOSED) ORDER]

Hrg. Date/Time: Jan. 13, 2015, 1:30  
Trial Date: Feb. 24, 2015

1  
2 TO THE HONORABLE COURT AND ALL PARTIES:

3 PLEASE TAKE NOTICE that on the above date and time, in the above  
4 referenced Court, Plaintiff Obie Anthony will move for partial summary judgment  
5 and/or summary adjudication of issues on two specific Brady violations alleged in  
6 the Complaint against Defendant City of Los Angeles and Defendants Marcella  
7 Winn and Pete Razanskas. This motion is based on the attached memorandum of  
8 points and authorities, and separately but concurrently filed statement of  
9 undisputed facts, Exhibits and Declarations of Bednarski and Fant. A proposed  
10 order is separately filed.

11 KAYE, McLANE, BEDNARSKI & LITT, LLP  
12

13  
14 DATED: Dec. 8, 2014

By /s/ Marilyn E. Bednarski  
MARILYN E. BEDNARSKI  
Attorneys for Plaintiff Obie S. Anthony, III  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. PRELIMINARY STATEMENT**

This motion is made in the context of the civil case filed against the City of Los Angeles and two individual Los Angeles Police Department “LAPD” police detectives. The lawsuit alleges amongst other things that the City through its Detectives deprived these plaintiffs of their rights to due process of law and deprived them of a fair trial by, among other acts, suppressing and failing to disclose to the prosecutor in the case material exculpatory information. Messrs. Anthony and Cole were convicted by jury in 1995 and sentenced to life in prison without parole. After serving 17 and 15 years respectively, their writs of habeas corpus were granted by two independent Superior Court judges.

After consultation with defendants in compliance with Local Rule 7-3, Plaintiff Obie Anthony brings this motion for partial summary judgment on issues in this case related to *Brady v. Maryland*, 373 U.S. 83 (1963). This motion seeks to have the court determine that certain, specified pieces of information that we contend were withheld from the Anthony/Cole prosecutors were exculpatory and material under *Brady*. These are pure legal issues, as there are no disputed facts regarding their existence, their non-disclosure, their exculpatory nature, or their materiality. This motion does not seek summary judgment as to whether the non-disclosure was done with reckless indifference to the rights of the plaintiff.

Specifically, Plaintiff seeks a determination that the below listed items were not disclosed and were exculpatory and material information that had to be provided to the defense before trial.

- 1) The suppression of the Arthur Jones six pack identification from Card B (OSA 07094-95) [“A. Jones Card B ID”]; and,
- 2) The suppression of the rooftop visit by Detectives Winn and Razanskas on March 28, 1994 during which the detectives saw the roof littered with bullets

1 and casings, and Razanskas collected six bullets from the roof, pocketed  
2 them and later gave them to reporter Miles Corwin ["Rooftop Bullets"].

3 **II. STATEMENT OF FACTS**

4 **A. Summary Prosecution Case in Chief**

5 At 11:30 p.m. on March 27, 1994, three African American men tried to rob  
6 Victor Trejo and Luis Jimenez and killed Felipe Gonzalez. The emergency medical  
7 responders found Gonzalez dead at the scene, lying face down on the street, with  
8 blood underneath him and no bloody trail. [Trial Test. Gould, OSA 1599-1600]  
9 The Coroner autopsy report indicates that the shot that killed Gonzalez traveled  
10 through his body from back to front at a 40° descending angle. [Depo. Exh. 14,  
11 OSA 9924] It was the prosecution's theory that Obie Anthony and Reggie Cole  
12 were two of the three assailants who tried to rob Trejo and Jimenez and killed  
13 Gonzalez. According to the prosecution's theory, Anthony was the one who  
14 opened the passenger door and shot Trejo and Jimenez; Cole was the one who  
15 attacked and killed Gonzalez. The evidence of culpability presented in the  
16 prosecution's case-in-chief consisted, virtually in its entirety, of the eyewitness  
17 testimony of three individuals, Trejo, John Jones and Arthur Jones. There was no  
18 physical evidence linking Anthony or Cole to the homicide. Castello Depo. 86-93.

19  
20 **B. Eyewitnesses Trejo, J. Jones & A. Jones**

21 Each of the three eyewitnesses, Victor Trejo, John Jones and Arthur Jones,  
22 was significantly discredited, both at trial and in later post-conviction hearings.

23 **1. Mr. Trejo**

24 Victor Trejo was 17 years old at the time of the assault. Decl. Trejo, Depo.  
25 Exh. 168, ¶13. Through the evening hours, Trejo, Jimenez and the decedent  
26 Gonzalez had been drinking and eating. They stopped outside Jones' brothel so  
27 Gonzalez could see if Melinda a prostitute he knew, was there. *Id.* Trejo and  
28 Jimenez waited in the car with the engine running, parked at the curb next to



1 Jones's two story building. *Id.* Jimenez was sleeping in the passenger seat when  
2 the robbers came up. He could not identify anyone and was not a witness at trial.

3 Trejo, the driver, through the rear view mirror saw the assailants surround  
4 his friend Gonzalez. [Decl. Trejo, Depo. Exh. 168, ¶4] One of them pushed  
5 Gonzalez up against the back of the car and hit him in the head with a gun. *Id.*  
6 Another opened the passenger door and yelled at them to give him all their money.  
7 [Decl. Trejo, Depo. Exh. 168, ¶5] This assailant grabbed Jimenez by the hair and  
8 unsuccessfully tried to pull him out. [*Id.*] The assailant pulled a gun from his  
9 waistband and started firing at Trejo and Jimenez, shooting both multiple times.  
10 [*Id.*] Trejo gunned the engine, drove off and saw in his rear view mirror as he was  
11 driving, Gonzalez running away from the robbers towards Trejo's car, was then  
12 shot in the back, and fell to the ground. [*Id.* at ¶6; Trejo Depo. 86:4-25]

13 Trejo was first interviewed three months after the attack, and was shown the  
14 photospread containing Anthony in position 1 in Card A. He identified Anthony as  
15 "looks like the suspect who opened the car door and shot me and Luis." [Depo.  
16 Exh. 37, OSA 9980, 10735 ] He was also shown the photospread Card B  
17 containing Cole, and could not identify anyone in it. [Trejo Trial Test. OSA 1511-  
18 12] At a live lineup he first viewed a group of people with Anthony, and could not  
19 make an identification of Anthony. [Depo. Exh 45; Trejo Trial Test. OSA 1515,  
20 1533] When he looked at the group of people with Cole, he identified number 4,  
21 not Cole, who was in position Number 5. [Depo. Exh 45; Trejo Trial Test. OSA  
22 1514] He testified at the preliminary hearing that he was sure that the person he  
23 picked in Cole's lineup, the person in position number 4, was Cole. *Id.* At the  
24 preliminary hearing, with both Anthony and Cole dressed in orange jail jumpsuits,  
25 Trejo identified them both as the suspects. [Preliminary Hearing Transcript, OSA  
26 1262]  
27  
28

1 At trial Trejo identified Anthony as the man that grabbed Jimenez through  
2 the door, and Cole as the man who was hitting and grabbing Gonzalez. [Trejo  
3 Trial Test. OSA 1479-1482] He testified that at the preliminary hearing he had  
4 doubted his selection of Anthony's picture because he could not remember the  
5 person very clearly, it happened very quickly, he was concerned about being  
6 killed, and it was dark. [Trejo Trial Test., OSA 1531-1532] To this day, the only  
7 person he is sure of being there that night is the person in position 4 of the Cole  
8 lineup, who is not Cole. [Decl. Trejo, Depo. Exh. 168, ¶12, ¶15]

9 **2. Mr. John Jones**

10 John Jones lived in and managed the house of prostitution in front of which  
11 Gonzalez was murdered. He testified in the trial that he was in the hallway of his  
12 building when the first shots were fired, and after his wife told him there was a  
13 robbery going on outside, he went to look out the bathroom window. [Trial Test.  
14 Jones, OSA 1640] He saw the car driving away. [OSA 1641-43] Anthony and  
15 Cole shot at him as they fled down the street. [OSA 1643] He testified that a  
16 third shooter was on the street shooting at the fleeing suspects and that one went  
17 down, and may have been shot.

18 Mr. Jones was interviewed three times by detectives Winn and Razanskas,  
19 first for a short time – five to six minutes – within a few hours of the murder, next  
20 later in the day on March 28 for about five minutes, and lastly on March 31 for 30-  
21 45 minutes. [OSA 1860, 1865, 1871, 1885; Winn trial Test., p. 455:9-25; 460:19-  
22 28; 466:13-20; 480: 19-26 ] In the detectives' documentation, Jones' recounting of  
23 the events of the night was presented as though he was a percipient witness to  
24 those details. In the middle of Jones' cross-examination during trial he disclosed  
25 that much of the information in his earlier statements to the detectives was actually  
26 the amalgamation of what he had been told by other supposedly percipient  
27 witnesses. [Jones Trial Test., OSA 1676, 1684,1685] Those included his  
28

1 daughters- Angela, then 7, and TJ, then 9 – his “wife”, Carol Canty, and others "in  
2 the neighborhood." [Jones Trial Test., OSA 1685] Detective Winn acknowledged  
3 Jones told her that his account was based on what he had learned from others but  
4 she failed to disclose that fact, either in her interview reports or otherwise. [Winn  
5 Trial Test. OSA 1888, 1904, 1920, 1921]

6 During the mid-morning of March 28, 1994, the Detectives returned to the  
7 crime scene and met with Jones. The Detectives Chronological record of events  
8 reflected that they had met with Jones who had given them a videotape. Depo.  
9 Exh. 1, OSA 2. The Preliminary Investigation Report did not reference any trip to  
10 the roof. Depo. Exh. 13, OSA 016. That rooftop visit and the observations and  
11 collection of bullets only became known years after the convictions. [Below §§D1]

12 On May 26, 1994, two months after the Gonzalez homicide, Jones was  
13 arrested on pandering and pimping charges relating to his running the house of  
14 prostitution. The LAPD VICE division had been investigating him for months  
15 and had amassed substantial evidence of his operation including surveillance,  
16 statements from prostitutes who lived and worked in the building, statements from  
17 a “John,” and vast documentary evidence seized from a search of the Jones’  
18 building on May 26, 1994. The search also uncovered a .357 caliber Magnum  
19 handgun on the second floor in a bedroom next to a bed, which floor Jones  
20 controlled, worked and lived with his family. [Depo. Exh. 70, OSA 6385-402]

21 If the detectives had reviewed Jones’ arrest report, they would have learned  
22 about the 357 caliber Magnum handgun recovered from Jones’s residence. In any  
23 event, Winn was on notice that Jones owned a gun because he testified at the  
24 preliminary hearing that he had a weapon. [Preliminary Hearing Transcript, John  
25 Jones Test., OSA 1338] In addition, both detectives were on notice of the  
26 existence of weapons in the building from viewing the building’s surveillance  
27 video which appears to show a weapon passed from one security guard to another  
28

1 employee inside the Jones building immediately after the shooting occurred.

2 [Depo. Exhibit 101a, Video Still Shot] At trial John Jones testified he had a gun  
3 that night, but denied shooting it. [Trial Test. Jones, OSA 1702].

4 John Jones had a prior criminal record, including felony convictions for  
5 manslaughter and pandering. The new charges, filed in late May, 1994, carried a  
6 mandatory prison sentence of six years which doubled if the strike prior was  
7 proven to 12 years. [Chun Depo. 70-73] The LAPD wrote letters seeking leniency  
8 on Jones' behalf, the first letter written 9/8/94, four days before Jones testified in  
9 the preliminary hearing in this case [Depo. Exh 74]; the second letter written  
10 10/12/94 [Depo. Exh 75] shortly after which Jones' plead guilty pursuant to a DA  
11 settlement agreement. [Depo. Exh 77] The DA struck his prior serious felony  
12 allegation, and allowed Jones to plead charges which did not require a prison  
13 sentence. [Chun Depo 169-173; Depo. Exh 80]. Jones was sentenced to probation  
14 with no jail time. [Chun Depo. 205-206; Depo. Exh. 79] On cross-examination,  
15 Jones denied receiving special treatment on his pandering case ." [Jones Trial  
16 Test., OSA 1666]. He testified that after his arrest he asked Detective Winn for  
17 help and she told him she could not help that there was nothing she could do.  
18 [Jones Trial Test., OSA 1690] Detective Winn testified that she told him she could  
19 not offer any help. [Winn Trial Test., OSA 1880] In his rebuttal argument, DA  
20 Castello argued that defense counsel Thomason's argument was not true that Jones  
21 was testifying and providing information because he wanted the LAPD's help in  
22 his own case. [Trial Closing Argument, OSA 2544]. He argued to the jury that  
23 Jones was simply a percipient witness. [*Id.* at OSA 2541-43]<sup>1</sup>  
24

25  
26  
27 <sup>1</sup> While it is not the subject of this motion, the Complaint against the County  
28 alleges that the County of Los Angeles is liable for the suppression of this *quid pro*  
*quo* deal, because the customs, policies, and practices of the County Defendants  
were a moving force behind the suppression of exculpatory impeachment

1           **3.     Arthur Jones**

2           Arthur Jones worked as a Safety Police Officer at Martin Luther King  
3 “MLK” hospital. He responded to the injury alert that Detective Winn put out to  
4 area hospitals to look out for a person seeking treatment for a gunshot wound to the  
5 leg. [Depo. Exh. 16] Arthur Jones advised Winn on March 31, 1994 that he had  
6 seen suspects who matched the description on the broadcast come to MLK seeking  
7 treatment. Depo. Exh 1, Chronological Record, OSA 0002a.

8           Three months later on June 24, 1994, Detective Winn went to Martin Luther  
9 King Hospital to interview Arthur Jones and show him the photospreads she  
10 created. [Depo. Exh 49, OSA 9965] Her follow-up investigation report stated that  
11 she showed Arthur Jones Card A (Anthony, position 1), Card B (Cole, position 2)  
12 which and Card C (Miller<sup>2</sup>), that he viewed the photographs and identified number  
13 one as the one who looked like he came for treatment for his left leg. [Depo. Exh.  
14 49, OSA 9965] Arthur Jones circled and initialed the picture of Obie Anthony and  
15 filled out an identification report and wrote in his report that:

16                 “Number one the one who come [sic] close to look like subject, who came  
17                 MLK Hospital for medical treatment to left leg He did not receive treatment  
18                 [sic] because he was ask how did he obtain his injury. He left location.”

19 [Depo. Exh. 35, OSA 9982-83] That identification report and initialed copy of the  
20 photospread Card A was included in Detective Winn’s Murder Book and provided  
21 to defense counsel in discovery. No other Arthur Jones identification report was  
22 produced pretrial to the defense. [Thomason Depo. 208, 210; Tom Depo. 120]

23           The murder book in two other places referenced Arthur Jones being shown  
24 photographs, but made no reference to A. Jones making any other identification.  
25 [Chron Notes Depo. Exh. 1, OSA 0003; Depo. Exh. 49, p. OSA 9965]. At trial  
26

27 information relating to John Jones’ deal, in violation of Brady. Complaint, CR 1,  
28 Case No. CV 13-07224-CBM (AJWx) [Anthony County Action].

<sup>2</sup> Mr. Miller was the third co-defendant charged in the alleged carjacking  
counts involving victim Santana, which were dismissed midtrial.

1 Arthur Jones identified Anthony as the man who came in seeking help for his  
2 friend's injured leg and Cole as the man who came into MLK with Anthony.  
3 [Trial Test. A. Jones, OSA 1814] He explained that he did not identify Cole before  
4 in the photos because he had a hat on his head. *Id.* at OSA 1815. A. Jones testified  
5 at trial that he picked them both out at the live lineups and he identified them in  
6 court as the two people he had seen come into MLK. [OSA 1815-1818]

7 **C. The Defense Case**

8 Both Messrs. Cole and Anthony presented alibi defenses to the murder. Mr.  
9 Anthony testified that he did not kill Mr. Gonzalez or rob the others. [Trial Test.  
10 Anthony, OSA 2178-79] He explained that he was not there, but was home sick.  
11 *Id.* He testified that he had been at Damon Josephs' 21<sup>st</sup> birthday party the night  
12 before and had gotten very drunk. [OSA 2172-3, 2193] The next day he was home  
13 sick in bed. [*Id.*] Several witnesses, including Mr. Anthony, testified about him  
14 being sick and home the next day and night on March 27. [Trial Test. Anthony  
15 OSA 2172, Williams OSA 2244-48, Alexander OSA 2259] One defense witness,  
16 Undra Williams, said he recalled helping Mr. Anthony move some furniture during  
17 that Sunday from an apartment. [Trial Test. Williams, OSA 2249-50] Anthony  
18 denied knowing Cole and denied that he went by the name Day Day. [Trial Test.  
19 Anthony, OSA 2176, 2187] He was impeached by evidence that he had a tattoo  
20 "Day Day 2" on his arm [OSA 2192-93] and by witnesses the prosecution called in  
21 rebuttal who said Cole and Anthony knew each other and Anthony went by Day  
22 Day. [OSA 2300-2301]

23  
24 Mr. Cole was also very sick, and his family members recalled him being  
25 home, watching TV and taking medicine on March 27. [Trial Test. T. Cole OSA  
26 2139, Cush 2044, S. Cole 2064-66]

27 **D. Post-Conviction Discovery of the Evidence of the Bullets on the**  
28 **Roof and Arthur Jones Identification of a Filler**

**1. Bullets on the Roof**

1 The LAPD detectives' investigation was marked by two very unusual facts.  
2 Winn had been with the LAPD several years and had been a detective in other  
3 divisions, but this was her first homicide investigation as a homicide detective  
4 trainee. [Winn Depo 120-122,137-138] She was partnered with Detective  
5 Razanskas. Winn was the primary detective and wrote most of the reports which  
6 Razanskas, as her supervisor, he signed off on. [Razanskas Depo. 129-130]

7 Another unusual fact was that Miles Corwin, an investigative journalist for  
8 the Los Angeles Times followed the detectives on their investigation of this and  
9 four other homicide cases from March – September 1994. Depo. Winn 120-122.  
10 They knew he was writing a book which was published in 1997. [Excerpt Book  
11 *The Killing Season* Depo. Exh. 95; Depo. Winn 140]

12 Corwin is now a tenured professor U.C. Irvine where he teaches immersion  
13 journalism, the work he was doing when he was following the detectives. [Corwin  
14 Depo. 25-27] He described in the source notes for the book that it “was a work of  
15 nonfiction; no names have been changed; no incidents have been altered.” [Depo.  
16 Exh 95, OSA 3015, Corwin Depo. 81-82]

17 For the first time, when the book was published, the information came to  
18 light that Detectives Winn and Razanskas visited the roof of John Jones' building  
19 on March 28, 1994, and found and collected six bullets there.<sup>3</sup> [Excerpted pages  
20 from the Corwin Book *The Killing Season*, Excerpt Depo. Exh. 95, OSA 2698-99]  
21 Corwin describes the trip to the rooftop:

---

22  
23  
24 <sup>3</sup> In the depositions of Winn and Razanskas in this case, Winn testified that  
25 the rooftop was littered all over with bullets and casings. [Depo Winn 338-343]  
26 Razanskas testified that they saw scattered debris including expended bullets.  
27 [Depo Razanskas 42-45] Detective Razanskas picked up six of these expended  
28 bullets, did not book them into evidence, and gave them to Miles Corwin. Corwin  
kept them at his home until 2014 when Plaintiffs' counsel discovered by subpoena  
issued prior to his deposition that he had the six bullets from the roof. [Corwin  
Depo., 136:1-141:15; Razanskas Depo., 42:6-45:17] Decl. Bednarski ¶8.



1        "He [Jones] takes them onto the roof for a better view of the murder scene. .  
2        . . Razanskas finds six rusty slugs on this roof within a few minutes and  
3        pockets them.  
4        Jones walks to the edge of the roof, looks down at the spot  
5        where Gonzales was shot and says, 'It was cold, man. Those  
6        some cold dudes.'" Corwin then describes how Jones takes the detectives downstairs where he  
7        shows them a video tape that they watch in his VCR showing the victim Gonzalez  
8        coming to the door, being told his friend is not home, leaving and then voices and  
9        shots are heard. [Excerpt Depo. Exh. 95, OSA 2698-99] Corwin recounts how the  
10       detectives watch the video again, and that Detective Razanskas was bothered about  
11       the gunshots and could not account for the third weapon. [*Id.* at OSA 2699]<sup>4</sup>  
12       Corwin then recounts the following conversation:

13       "Did you see a third shithead with a gun?' Razanskas asks.  
14       Jones shakes his head.  
15       'Was there another suspect out on the street who could have  
16       been strapped?' Winn asks.  
17       Jones shakes his head. 'I told you everything I know.'  
18       . . . Razanskas stares out the window, lost in thought. 'I think  
19       our wit is holding out.'  
20       'Yeah,' she [Winn] says. 'He's only going halfway with us.'  
21       'He was up on that roof the whole time. He knows more  
22       than he's letting on. That's OK. We'll get another shot at him.'"  
23       [Excerpt Depo. Exh. 95, OSA 2698-99]

24       Corwin describes in his article that a few days later, the detectives have John  
25       Jones come to the station for an interview. [Excerpt Depo. Exh. 94, OSA 3025]

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26       <sup>4</sup> In March 1994 three months before the trial Miles Corwin published an  
27       article in the LA Times Sunday section which was excerpted from the book to be  
28       published. Depo. Exh. 94, p. OSA 3020-31. That article included information that  
Jones had shown them his video which showed Gonzalez coming to the door,  
asking for someone and being told his friend was not home, and leaving, followed  
by voices and shots. The article revealed that Razanskas was bothered by the  
gunshots and could not account for the third weapon. [OSA 3025] The article did  
not include the information quoted and indented above and on p.11.



1 Winn has testified that Corwin was present during the interview. [Winn Test.  
2 Anthony Habeas 9/1/11 672; Winn Test. Cole MTS 12/18/07 6536-43] Corwin  
3 writes how John Jones tells them that they should look into whether one of the  
4 suspects got shot, Razanskas suggests they call the third shooter an unknown  
5 citizen, and Jones says the unknown citizen might have capped off about six  
6 rounds, firing the shots as the suspects ran away down the street, where he saw the  
7 suspect get shot and begin limping and get the help of his friend to escape. [Depo.  
8 Exh. 94, OSA 3026] Corwin then describes in his book the following information  
9 not included in the article: that after Razanskas told Jones he had no problem with  
10 this guy firing a few shots, Jones asked “What if he’s an ex-felon with a gun?”  
11 [Excerpt Depo. Exh. 95, OSA 2703]

12 In addition Corwin describes in his book (not in the article) that after Jones  
13 tells them the unknown citizen shot and hit one of the suspects in the leg:

14 “Razanskas and Winn quickly try to figure out who the unknown  
15 citizen was. Maybe the unknown citizen knew the victim  
16 and decided to mete out some street justice after he saw  
17 what happened. Maybe the unknown citizen was a neighbor  
18 who wanted to scare the suspects off. Or maybe the unknown  
19 citizen was Jones, and maybe he fired at the suspects after they  
20 had fired at him.

21 Winn and Razanskas do not want to push too hard to determine  
22 who the unknown citizen was. They have a good witness,  
23 a rare commodity these days at South Bureau Homicide. They  
24 do not want to do anything to scare him off.”

25 [Excerpt Depo. Exh. 95, OSA 2703]

26 A witness statement of that interview was initialed and signed by Jones.  
27 [Depo. Exh. 15, OSA 9952-53] Nowhere in that statement [Depo. Exh 15], in the  
28 Chronological Record entry [Depo. Exh 1] or anywhere else in the murder book  
was the trip to the roof, the observations on the roof, or the collected bullets  
documented. The rooftop evidence and observations were not disclosed to the  
defense counsel prior to trial. [Depo Thomason 215-17; Depo. Tom 125-28]

1           **2. The Arthur Jones Six Pack Identification Of a Filler In the Cole**  
2           **Photospread**

3           After trial, and during post-conviction proceedings for Cole<sup>5</sup>, it came to light  
4 for the first time that when Arthur Jones looked at the Cole photospread on June  
5 24, 1994, that he had identified someone else, not Cole. The actual copy of the  
6 photospread that he initialed and circled the person in Position 1 (not Cole) and the  
7 report he wrote describing his selection of that person were not disclosed before  
8 trial. A. Jones wrote in that report:

9           “Number one looks like subject who was carrying [sic] the other subject in to  
10 the MKL hospital and the [sic] both left together in a white Toyota.”  
11 Depo. Exh 36, OSA 7094-5; A. Jones/Card B].

12 Cole was in the number 2 position. *Id.* Arthur Jones identification of another  
13 person was not in the Chronological Record, the Follow-up Report or any witness  
14 Statement or Report. Winn further concealed the suppressed identification, when  
15 she falsely testified when asked if Arthur Jones identified anyone other than Mr.  
16 Anthony, Detective Winn testified “No, he did not.” [Trial Test. Winn, OSA 1902]

17           **3. Ballistics Analysis**

18           After Corwin revealed in 2014 that he had the bullets pocketed on the  
19 rooftop, Plaintiffs’ counsel obtained the bullet found in the street (Item #11) from  
20 the trial court evidence clerk and the Corwin bullets. Decl. Bednarski at ¶9. The  
21 characteristics of the bullets found on the roof were examined and analyzed by  
22 Forensic Firearms Examiner Patricia Fant, an expert retained by the Plaintiff in this  
23 case once the significance of the previously undisclosed bullet evidence was  
24 disclosed. She determined that one of the six bullets (a .38Spec/357Mag caliber)

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25           <sup>5</sup> Counsel Christopher Plourd for Mr. Cole in his Motion to Strike Proceedings in  
26 Imperial County, in the course of investigating the underlying facts of the  
27 Gonzalez murder case, discovered the A. Jones PS Identification Report and  
28 initialed PS Card B documents, apparently when he was provided a copy of the  
Gonzalez murder book different from the copy that was provided defense counsel  
in the Gonzalez trial. Decl. Bednarski at ¶ 6.

1 had been discharged from the same weapon that had discharged the .38 special  
2 bullet that had been found on the street in the vicinity of the homicide victim on  
3 March 28, 1994. [Fant Decl. ¶¶6C & 6D].

4 The Smith & Wesson 357 Magnum caliber stainless steel revolver seized  
5 from Jones building on May 26, 1994, is capable of discharging a .38 special  
6 bullet. [Fant Decl. ¶6E] Razanskas conceded that he knew a .357 could  
7 discharge a .38 bullet. [Razanskas Depo., 468:15-469:19] The .357 Magnum  
8 weapon discovered in the second floor bedroom was destroyed by the Los Angeles  
9 Police Department in 1996. [Depo. Exh. 70, OSA 7247; OSA 011605; Fant Decl.  
10 ¶6E] Although the technology existed, no effort was made by the detectives to  
11 compare the .38 special bullet found on the street with Jones' .357 caliber Magnum  
12 handgun to determine whether that weapon shot that bullet. [Fant Decl. ¶6G]

#### 13 **4. Other Information Learned Post-Conviction**

14 Isaac Gaston has been deposed in this case and testified that he lived in John  
15 Jones' house of prostitution on and off for six years in the 1990s, including at  
16 times in 1994 and 1995. He himself was a pimp who employed three prostitutes,  
17 [Gaston Depo., 11:6-17:10]. He was familiar with the activities inside the building  
18 as well as the prostitution activities of John Jones. [Gaston Depo., 16:1-18:11] He  
19 testified in his deposition that John Jones regularly carried a handgun, including a  
20 .357 caliber revolver which was his weapon of choice [Gaston Depo., 40:19-  
21 44:18]. Jones employed a "security crew" to protect the building and the prostitutes  
22 who worked there; at least two of the crew were positioned on the roof of the  
23 building every night [Gaston Depo., 40:7- 42:6, 80:24-83:10, 109:5-110:7].<sup>6</sup> Jones  
24 and members of the "security crew" shot at people on the street whom they  
25

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26  
27 <sup>6</sup>Jones' daughter, Angela, 7 years old in 1994, testified in post-conviction  
28 proceedings that she heard her father's footsteps on the roof during the incident.  
[OSA 3553, Angela Jones testimony, OSA1212: 3-7; 1225:2-20] The defense  
lawyers did not know this information. Tom Depo. 118; Thomason Depo. 238.

1 perceived as threats to the prostitution business. [Gaston Depo., 42-47; 109-110]  
2 On several occasions, Gaston observed Jones point his weapon from inside the  
3 building at persons on the street who Jones believed were making trouble around  
4 the building. *Id.* A prostitute named Kim, who worked for Gaston in 1994/95, told  
5 him, regarding the night of the homicide: “you know Johnny did that [expletive]  
6 Daddy.” [Gaston Depo, 106: 20-24: “You know Johnny did that shit.”]

7 **III. DEFENDANTS KNEW AND FAILED TO PROVIDE TO THE**  
8 **PROPER PROSECUTORIAL AUTHORITIES THE SUPPRESSED**  
9 **INFORMATION OF THE EVIDENCE ON THE ROOF AND THE**  
10 **ARTHUR JONES IDENTIFICATION OF A FILLER, AND THEIR**  
11 **ACTIONS VIOLATED *BRADY V. MARYLAND* BECAUSE**  
12 **INDIVIDUALLY AND COLLECTIVELY, THAT INFORMATION**  
13 **WAS EXCULPATORY AND MATERIAL**

14 *Brady v. Maryland*, 373 U.S. 83 (1963), establishes that the “suppression by  
15 the prosecution of evidence favorable to an accused upon request violates due  
16 process where the evidence is material either to guilt or to punishment, irrespective  
17 of the good or bad faith of the prosecution.” *Brady*, 373 U.S. at 87. There are three  
18 essential components to a *Brady* claim. (1) the evidence at issue must be favorable  
19 to the accused; (2) the evidence must have been suppressed by the State; (3)  
20 prejudice must have ensued. *Strickler v. Greene*, 527 U.S. 263 (1999); *Smith v.*  
21 *Almada*, 640 F.3d 931, 939 (9th Cir. 2011). To determine whether prejudice  
22 existed, courts look to the materiality of the allegedly suppressed evidence. *Hovey*  
23 *v. Ayers*, 468 F.3d 892, 916 (9<sup>th</sup> Cir. 2006). To establish civil liability,  
24 “a §1983 plaintiff must show that police officers acted with deliberate indifference  
25 to or reckless disregard for an accused’s rights or for the truth in withholding  
26 evidence from prosecutors.” *Tennison v. City & County of San Francisco*, 570  
27 F.3d 1078, 1087 (9th Cir. 2009).

28 This motion concerns two types of evidence, which plaintiff contends was  
known to defendants yet withheld from prosecutors and defense counsel: the

1 suppression of the Arthur Jones six pack identification from Card B (OSA 07094-  
2 95) [“A. Jones Card B ID”]; and, the rooftop visit by Detectives Winn and  
3 Razanskas on March 28, 1994 during which Razanskas collected six bullets from  
4 the roof, pocketed them and later given to reporter Miles Corwin [“Rooftop  
5 Bullets”].

6 **A. Evidence That Jones Or Someone In His Building Was Shooting**  
7 **From The Rooftop Using The Same Weapon That Shot The Bullet**  
8 **Booked Into Evidence As Item #11 Was Exculpatory & Material**

9 **1. The Evidence From The Roof Was Not Disclosed**

10 The murder book contained a Chronological Record “Chron” of the  
11 investigation. Depo. Exh. 1. DA Castello testified at his deposition that the Murder  
12 Book should contain a witness statement or Chron note for every contact or  
13 interview by the police. Depo. Castello RT 68-69. He testified that any relevant  
14 material should be in the murder book and that would include Brady evidence. *Id.*  
15 at RT 74. It is the detectives’ responsibility to put together the murder book and to  
16 put everything involved with the case (information, reports, observations, and all  
17 Brady information) in there. *Id.* at RT 68-69.

18 This roof top visit evidence was described for the first time in reporter Miles  
19 Corwin’s non-fiction book “The Killing Season” published in 1997, two years after  
20 the trial. The reporter shadowed the detectives when they went back to the crime  
21 scene and Jones building on March 28, 1994. The murder book disclosed in this  
22 case contained no document or note revealing that Jones had taken the detectives  
23 on the roof on March 28, or the Detectives observations on the rooftop. The  
24 lawyers who defended Anthony and Cole have testified in their deposition that  
25 they never knew the information about the trip to the roof, the observations or  
26 bullets collected from the roof. Consistent with that testimony, the trial record  
27 reveals no reference at trial to such a trip to the roof , any observations of the roof  
28 being littered with bullets or casings, or any expended bullets being pocketed.

1 This evidence of shooting on the roof is potent evidence that the Gonzalez  
2 shooting from the roof and therefore was inconsistent with an assailant shooting  
3 Gonzalez from the ground. Without the information discovered post-conviction of  
4 Winn and Razanskas accompanying Jones to the roof, seeing the rooftop littered  
5 with bullets and casings, and Razanskas pocketing the six bullets, the defense was  
6 not on reasonable notice of the importance of a ballistics analysis that could have  
7 compared Bullet #11 to the rooftop bullets, or Bullet #11 to Jones' 357 handgun.

## 8 **2.The Evidence from the Roof was Exculpatory**

9 The suppressed rooftop bullet that is a match to #11 was strong evidence that  
10 the third shooter was shooting from the roof and that person was either John Jones  
11 or someone in his employ. The Coroner autopsy report indicated that the shot that  
12 killed Gonzalez travelled through his body at a descending angle. [Depo Exhibit  
13 14, OSA 9924] This information coupled with the undisclosed bullet information,  
14 supports the theory that the bullet that killed Mr. Gonzalez was shot from the roof.  
15 Defense counsel argued in closing that the shot came from higher, and that Jones  
16 had a reason to lie and shift the blame to avoid trouble. [Transcripts Trial Closing  
17 Arguments, OSA 2509-10] The roof of the building as well as the bathroom  
18 window where John Jones claimed he was, were above the corner where Gonzalez  
19 was shot and died. [Depo. Exh. 22, OSA 8248] Jones admitted having a gun that  
20 night, and could from his higher location in the building, have shot the bullet that  
21 killed Gonzalez. The bullets from the roof were exculpatory and would have been  
22 tangible physical evidence supporting defense counsel's argument. They would  
23 have supported a defense theory that John Jones was managing a violent criminal  
24 operation (impeaching his credibility and exposing possible bias) and/or that John  
25 Jones or someone in the building was involved in the Gonzalez shooting.

26 In addition the evidence would have directly undercut the prosecution's  
27 theory of the case that Cole fired the shot that killed Gonzalez and directly  
28 impeached Jones that an "unknown citizen" was the third shooter. He had a



1 motive to lie to deflect the investigation away from himself or someone on his staff  
2 as the shooter. He also had a motive to make himself an essential eyewitness to  
3 curry the LAPD favor in his own pandering case.

4 Had the above information been made known to the defense before trial, a  
5 reasonable investigation would have uncovered substantial circumstantial evidence  
6 that the fatal shot was fired from the roof of the house of prostitution by John Jones  
7 or one of his "security" crew. This investigation may well have led to an interview  
8 with Angela Jones, the daughter who testified in a post-conviction proceeding for  
9 Cole that she heard her father's footsteps on the roof during the crime.

10 **3. The Evidence From the Roof was Material Collectively and**  
11 **Individually Because it Undermined the Prosecution's Theory,**  
12 **Cast doubt on the Integrity of the Investigation and Impeached**  
13 **John Jones**

14 Any evidence tending to prove the involvement by Jones or his employees in  
15 the shooting would have been highly material because it would have established a  
16 motive for John Jones, the prosecution's key witness, to cooperate with the LAPD  
17 and shift the blame to anyone else. It also would have given the jury a powerful  
18 third party liability theory and, if they believed it was Jones, impeached his  
19 testimony that he was at the second floor window and saw the perpetrators from  
20 that vantage.

21 The evidence observed on and collected from the roof undermined the  
22 prosecution's theory, cast doubt on the integrity of the investigation and impeached  
23 John Jones. In his July 28, 2014 deposition, Deputy District Attorney George  
24 Castello testified that, if there had been evidence in 1994-1995 that John Jones had  
25 fired the fatal bullet, "everything in this case would have been different." [Castello  
26 Depo.182:1-25] DA Castello explained at his deposition that if Jones was a  
27 shooter and was shooting from the roof, then he may have shot one of the victims  
28 which would change the nature of the case. If Jones shot and killed Gonzalez it  
changes the analysis of whether liability on a felony murder or other theory could

1 be extended to the perpetrators of the robbery. [Castello Depo. 107-108] He  
2 further explained that if Jones was on the roof, rather than the window, it would  
3 change his vantage point impeaching his identification. [Castello Depo. 105-107]

4 It is clearly the law in California that "direct or circumstantial evidence  
5 linking [a] third person to the actual perpetration of the crime" is admissible in a  
6 homicide prosecution like this one. *People v. Hall*, 41 Cal.3d 826, 835, 226 Cal.  
7 Rptr. 112 (1986). "To be admissible, the third-party evidence need not show  
8 'substantial proof of a probability' that the third person committed the act; it only  
9 needs to be capable of raising a reasonable doubt of defendant's guilt." *Id.* at 832.  
10 *See also United States v. Spencer*, 1 F3d 742,749 (9th Cir. 1992). Here DA  
11 Castello tried the case on a felony murder theory arguing that each of the robbers  
12 was responsible for the acts of the other robbers occurring in the course of the  
13 robbery. Trial Closing Arguments, OSA 2484-85. The prosecution theory was that  
14 Cole shot the bullet that killed Gonzalez. OSA 2489-94. This evidence that a third  
15 person, not one of the robbers, and not Cole shot the fatal bullet contradicted the  
16 prosecution's theory.

17 Numerous cases support that evidence is material which undermines the  
18 prosecution's theory of the case and supports an alternative theory. *See, e.g.*,  
19 *D'Ambrosio v. Bagley*, 2006 WL 1169926 (N.D. Ohio 2006) (suppressed witness  
20 statements and other evidence were material in part because they could have  
21 undercut the state's theory of the case and assisted the defendant in establishing an  
22 alternative theory); *Benn v. Lambert*, 283 F.3d at 1055 (undisclosed expert witness  
23 conclusion that a fire was accidental was material evidence that could have served  
24 to rebut state's primary theory for motive, and the aggravating circumstances of  
25 common scheme or plan); *Paradis v. Arave*, 130 F.3d 385 (9<sup>th</sup> Cir. 1997) (failure to  
26 disclose detectives' notes containing medical examiner's conclusion that would  
27 have rebutted prosecution's theory of the case was material impeachment evidence  
28 where the medical examiner later offered testimony contradictory to the



1 conclusions conveyed to the detective); *Robinson v. Cain*, 501 F.Supp.2d 399, 410  
2 (E.D. La. 2007) (failure to disclose police report referencing anonymous witness  
3 statements violated *Brady*, as they suggested a motive not easily imputable to the  
4 defendant).

5 Moreover, suppression of evidence related to Jones' involvement in shooting  
6 deprived defense counsel of the opportunity to pursue their own investigation to  
7 explore and possibly confirm the alternative theory. *Montgomery v. Bagley*, 581  
8 F.3d 440, 448 (6<sup>th</sup> Cir. 2009) ("failure to disclose exculpatory witness statements  
9 not only deprives the defense of certain evidence, but also has the effect of  
10 representing to the defense that the evidence does not exist causing defense  
11 counsel to abandon lines of independent investigation, defenses, or trial strategies  
12 that it otherwise might have pursued").

13 Furthermore, the evidence impeached the prosecution's central witness John  
14 Jones. If Jones was the shooter, then he lied when he said he testified he did not  
15 shoot a gun that night. If he had a 357 and shot it and killed Gonzalez then he lied  
16 about many things including that he was in the window as opposed to the roof, that  
17 he did not shoot but an unknown citizen did, that if he shot maybe he shot not to  
18 defend his own life, but to defend his business and turf. [Castello Depo. 107-108,  
19 agreeing that if Jones was the shooter, possessed a weapon as a felon and may have  
20 shot Gonzalez would change the case].<sup>7</sup>

21 **B. Evidence of the Undisclosed Arthur Jones Identification of a**  
22 **Filler Was Exculpatory and Material**

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23  
24  
25  
26 <sup>7</sup> There is ample other circumstantial evidence discovered since the trial that  
27 corroborates this strong physical evidence that Jones was the third shooter  
28 including Trejo deposition testimony that Detective Razanskas told him that the  
bullet that killed Gonzalez came from the building from above. [Trejo Decl.  
7/4/2014 at ¶ 13; Trejo Depo., 120: 16-23 ]

1                   **1. Arthur Jones Identification of a Filler was Not Disclosed.**

2           It is undisputed that the Detectives did not include in the murder book or  
3 otherwise disclose to the prosecutor the Arthur Jones Report of Identification or his  
4 initialed and circled photocopy of the Card B photospread in which he identified  
5 someone else, not Cole. [Depo. Exh. 36, Depo. Tom 120-121 (previously testified  
6 did not get these documents in discovery before the trial, still has that opinion and  
7 would have used it during trial if had gotten it); Depo Thomason 207-208 (was not  
8 provided Depo Exh. 36 before trial)] The two pages that constituted the  
9 identification were not used or referenced during any proceeding; they are not  
10 contained in the archived DA file or either of the defense attorneys' archived files.  
11 Decl. Bednarski at §5. DA Castello testified in his deposition that he did not recall  
12 seeing Depo. Exh 36 before. [Castello Depo. 135-6] The fact of the filler  
13 identification was omitted from Detective Winn's chronology and follow-up  
14 identification report, and it was not mentioned in any other LAPD report. Both  
15 Detective Winn and Arthur Jones testified falsely at trial further concealing the  
16 identification of the filler: Arthur Jones testified that he was shown the Anthony  
17 photospread and circled no. 1 and those were the only ones [photos] he saw. [Trial  
18 Test. A. Jones OSA 1832] Detective Winn testified that Arthur Jones had not  
19 made any other identifications from the six-packs that he was shown (aside from  
20 Card A). [Excerpt Trial Test. Winn Vol. 3, OSA 1902]

22                   **2. Arthur Jones Identification of a Filler Was Exculpatory**

23           Evidence that Arthur Jones identified someone else, not Cole in his  
24 photospread Card B constitutes significant impeachment evidence, which is  
25 exculpatory within the meaning of *Brady*. *United States v. Blanco*, 392 F.3d 382,  
26 393 (9th Cir. 2004); *Giglio v. United States*, 405 U.S. 150, 154 (1972), (evidence  
27 affecting credibility falls within the general rule requiring disclosure). Arthur Jones  
28 testified he made no other identifications (besides his identification of Anthony in

1 card A). Winn also testified that Arthur Jones made no other identifications. Both  
2 would have been impeached by this evidence that he did in fact make another  
3 identification and it was not of Cole.

4 Furthermore his Card B identification of another person is affirmative  
5 evidence admissible to exculpate Anthony and Cole as it is non-hearsay evidence  
6 of identification of another, not a defendant/suspect. The prosecution theory was  
7 that Anthony and Cole ran away from the crime scene and that as they ran, one was  
8 shot in the leg. The detectives based that theory on John Jones' statement that he  
9 saw them running down 49<sup>th</sup>, that one went down, and that they should look into  
10 whether they had a leg wound. The detectives asked area hospitals if anyone had  
11 seen the suspects which they described coming for treatment for a gunshot wound  
12 to the leg. Arthur Jones responded on March 31 that he had seen the suspects  
13 fitting the description come into the hospital for treatment. On June 24, 1994,  
14 Winn showed Arthur Jones the photospreads and that is when he said Anthony in  
15 Card A came closest to looking like the guy he saw with the bandaged leg assisted  
16 by another man.

17 At the preliminary hearing, which took place after the detective found out  
18 Cole had a scared leg from a gunshot wound, Arthur Jones identified Cole as the  
19 one he saw with the bandaged leg, and Anthony the one helping him. The  
20 suppressed photospread Card B and ½ page report by Arthur Jones describing his  
21 pick of another person in Card B, not Cole, is powerful affirmative evidence that  
22 he saw someone else, not Cole and Anthony and is evidence that strongly  
23 impeaches his under oath identification of Cole as the wounded man at the  
24 preliminary hearing. If he was wrong about that, he could be wrong about  
25 something else. At trial, Cole's counsel presented affirmative evidence that Cole's  
26 bullet wound was from being shot when he was 13 years old, that his leg was not  
27 injured and that Officer Garcia saw him running away from him on April 1, 1994.  
28

1 DA Castello then argued in closing that it must have been Anthony that was  
2 injured, and that Arthur Jones must be mistaken with respect to which of the two of  
3 the men was injured. Trial Closing Arguments, OSA 2494-95. The prosecution's  
4 sudden switch in closing argument to adjust to Cole's evidence of no fresh leg  
5 wound would have had little persuasive effect if the jury had known that Arthur  
6 Jones had not identified Cole, but someone else entirely.

7 Detective Winn's failure to disclose this other identification in discovery and  
8 her false testimony casts serious doubts on the integrity of the entire police  
9 investigation. *See Robinson v. Cain*, 501 F.Supp.2d 399 (evidence that  
10 investigating officers falsely attributed an identification to a witness who did not in  
11 fact make the identification tends to impeach the credibility of the officers and the  
12 general credibility of their investigation).

13 **3. Arthur Jones Identification of a Filler Was Material Because it**  
14 **was Affirmative Identification Evidence and Impeached Arthur**  
15 **Jones**

16 The case against Anthony and Cole was built entirely on eyewitness  
17 testimony, and any evidence undermining the three eyewitnesses was essential to  
18 the defense. Each of the three eyewitnesses had problems of reliability, accuracy  
19 or bias. Thus the case would have been further weakened by evidence that Arthur  
20 Jones was unable to identify Cole, and actually identified someone else in the Cole  
21 photospread. This made the withheld information critical exculpatory evidence.

22 For example, the prosecution argued that Arthur Jones had ample  
23 opportunity and lighting to observe the suspects, suggesting that he was unlikely to  
24 be mistaken. The filler identification would have demonstrated, *inter alia*, that he  
25 had already been mistaken (assuming that the filler was not actually one of the  
26 perpetrators) and that he was willing to make identifications when he could not.

27 John Jones acknowledged during cross-examination that he did not view the  
28 entire incident, and he had not witnessed much of what he conveyed to the police.  
Thus, his opportunity to view was quite limited, with suspects running away in the

1 dark and shooting at him. His reliability as an eyewitness was compromised by the  
2 circumstances. In addition he had significant motives to lie both because of the  
3 evidence suggesting he was running a brothel, and had been long been under  
4 investigation, that he was charged with pimping and pandering in a mandatory  
5 prison case when he identified Anthony and Cole at the preliminary hearing as the  
6 suspects, that he was an ex-felon in possession of a weapon on March 27, that he  
7 may have been the third shooter, and that he had two prior felony convictions.

8 Mr. Trejo's eyewitness testimony was inherently suspect considering the  
9 fact that the events he recounted happened so quickly, it was dark, and it was  
10 traumatic. He was unable to positively identify either defendant during photo  
11 spreads or live line ups. He did not get a very good look at the man at the door. He  
12 got a much better look at the man who assaulted Gonzalez. He identified Anthony  
13 in the Card A photospread as looking like the man who grabbed Jimenez and did  
14 not identify anyone from card B. He did not identify either Anthony or Cole at the  
15 live lineups. In fact, he identified someone other than Mr. Cole at that procedure,  
16 person number 4 in live-lineup 2, which according to his deposition testimony and  
17 declaration is the only one of which he is sure was involved in the crime - - an  
18 innocent filler. [Trejo Decl. Depo Exh. 168 at ¶ 15; Trejo Depo. 107-113]  
19 Although he identified Anthony at trial, he did so subsequent to having seen him  
20 several times before including in photos, the lineup, and the preliminary hearing.

21 Arthur Jones' testimony was equally as suspect, even before considering the  
22 non-disclosed identification of someone else. After originally identifying Mr.  
23 Anthony as the hospital visitor with the leg wound, his recollection dramatically  
24 changed so that he ultimately identified Mr. Cole as the wounded visitor, thereby  
25 making his identification of Mr. Cole coincide with the detectives position at that  
26 time that Cole had a bullet wound from the shooting. John Jones supplied the link  
27 making it seem that Arthur Jones' identification evidence independently  
28 corroborated his identification of Anthony and Cole enabling the prosecutor to

1 argue that it was an unlikely coincidence that Arthur Jones, Victor Trejo and John  
2 Jones all identified the defendants. Trial Closing Arguments, OSA 2498-2500. For  
3 these reasons, Arthur Jones' credibility and reliability or lack thereof of his  
4 identification of Anthony and Cole was of paramount importance to the case and,  
5 therefore, any evidence reflecting negatively on his credibility was material.

6 The undisclosed evidence was material in another respect. Arthur Jones'  
7 incomplete description of the photo six pack procedure was tantamount to false  
8 testimony that had to be disclosed insofar as it left jurors with the impression that  
9 although Arthur Jones had good lighting and opportunity to observe, he may have  
10 not identified the second man "Cole" in the six pack --even though he really was  
11 the man --because he'd been called away to another hospital emergency. *E.g.*,  
12 *Simms v. Cupp*, 354 F. Supp 698, 700 (D. Oreg. 1972) ("[t]here is no distinction  
13 between false testimony and the presentation of a witness' partial testimony which,  
14 when considered in isolation, creates a distorted picture of the facts...").

15 Evidence is material if there is a reasonable probability that, had the  
16 evidence been disclosed to the defense, the result of the proceeding would have  
17 been different. *United States v. Bagley*, 473 U.S. 667, 682 (1985). A "reasonable  
18 probability" of a different result exists where evidentiary suppression "undermines  
19 confidence in the outcome of the trial." *Kyles v. Whitley*, 514 U.S. 419, 434 (1995)  
20 (quoting *Bagley*). The issue is whether, in the absence of the disclosure, the  
21 defendant "received a fair trial, understood as a trial resulting in a verdict worthy  
22 of confidence". *Id.* The court may find a "reasonable probability" even where the  
23 remaining evidence would have been sufficient to convict the defendant. *Strickler*  
24 *v. Greene*, 527 U.S. 263, 280 (1999).

25 Impeachment evidence is decidedly material where it could undermine the  
26 credibility of a key witness on an essential issue in the case. *Banks v. Dretke*, 540  
27 U.S. 668, 699-703 (2004); *Giglio* at 154-155 (1972); *Kyles v. Whitney*, 514 U.S. at  
28 444; *Benn v. Lambert*, 283 F.3d at 1054 (holding impeachment evidence material

1 where witness's reliability may well be determinative of guilt or innocence); *Singh*  
2 *v. Prunty*, 142 F.3d at 1161 (impeachment evidence of deal between state and  
3 witness was material because witness's credibility was vital where witness  
4 provided the sole evidence to establish the prosecution's murder for hire theory);  
5 *Carriger v. Steward*, 132 F.3d 463, 479 (9<sup>th</sup> Cir. 1997).

6 Any evidence impeaching Arthur Jones identification might well have  
7 altered the outcome of the trial and was therefore material. *Kyles v. Whitney*, 514  
8 U.S. at 419 (noting that the effective impeachment of one eyewitness can call for a  
9 new trial even though the attack can extend to others); *Hernandez v. City of El*  
10 *Paso*, 2009 WL 2096272, *supra*, at p. 18 (undisclosed witness statement  
11 undermining eyewitness account was material because the case turned almost  
12 exclusively on eyewitness identification and lacked physical evidence linking  
13 defendant to the victim's murder); *Montgomery v. Bagley*, 2009 WL 3075609 (6<sup>th</sup>  
14 Cir. 2009). Eyewitness identification testimony greatly influences juries. *See, e.g.*,  
15 *Watkins v. Sowders*, 449 U.S. 341, 350, 101 S.Ct. 654, 660 (U.S. 1981) (Brennan,  
16 J., dissenting) (citing Elizabeth Loftus, Eyewitness Identification, for the  
17 proposition that eyewitness identification is "overwhelmingly influential"); *United*  
18 *States v. Brownlee*, 454 F. 3d 131 (3d Cir. 2006) (citing dissent); *Lindsey v. King*,  
19 769 F.2d 1034, 1042 (5<sup>th</sup> Cir. 1985) ("the destruction by cross-examination of the  
20 credibility of one of two crucial witnesses-even if the other remains untouched-  
21 may have consequences beyond the discrediting of his own testimony").

#### 22 **IV. CONCLUSION**

23 For the reasons stated above, the motion should be granted.

24 DATED: December 8, 2014

Respectfully Submitted,

25 KAYE, McLANE, BEDNARSKI & LITT, LLP

26 By /s/ Marilyn E. Bednarski

27 MARILYN E. BEDNARSKI

28 Attorneys for Plaintiff Obie S. Anthony, III



DECLARATION OF MARILYN E. BEDNARSKI

1  
2  
3 1. I am one of Plaintiff Obie Anthony's counsel of record in the matter of *Obie*  
4 *S. Anthony III v. City of Los Angeles et. al.*, Case No. CV 12-01332 –CBM  
5 (AJWx).

6 2. This declaration is prepared and filed in support of Plaintiff's Statement Of  
7 Undisputed Facts filed separately but concurrently with Plaintiff's Motion for  
8 Summary Judgment against the City Defendants entitled "Plaintiff's Motion For  
9 Partial Summary Judgment On The Issues Of Whether Certain Identified  
10 Information Allegedly Withheld Was Exculpatory And Material Under The  
11 Standards of *Brady v. Maryland*."

12 3. Several of the Exhibits filed with the Statement of Undisputed Facts and  
13 referenced in the Summary Judgment Motion against the City are referred to by  
14 Deposition Exhibit number, that is the number used in Depositions and referred to  
15 in the witnesses' testimony at those depositions.

16 4. The Exhibits that I have filed are exact copies of the exhibits used in the  
17 depositions with these exceptions:

18 A. On occasion I have highlighted the portion referenced by placing a  
19 redlined box around the specific portion. I did this to assist the reader in  
20 efficiently locating the referenced part of the exhibit. The redlined box  
21 markings are not in the original documents. A good example of this is  
22 attached Deposition Exhibit 1, p. 1, where I have put a redlined box  
23 around the entry dated 3-28-94 1130 in the Detectives Chronological  
24 Record of the investigation of this case.

25 B. Because Deposition Exhibit 95 (Miles Corwin's book, *The Killing*  
26 *Season*, is 356 pages long, and the references to this Motion consist of  
27 few pages, I have designed my excerpted pages for purposes of this  
28



1 motion as Deposition Exhibit 95, partial excerpt pp. OSA 2663, 2697-  
2 2703, 3015,.

3 5. I have reviewed the entire transcript of the 1995 preliminary hearing and  
4 trial in the homicide case against Messrs. Anthony and Cole and based on that  
5 review conclude that the two pages that constituted the Arthur Jones identification  
6 of filler, not Mr. Cole (Depo. Exh 36) were not used or referenced during any part  
7 of those proceedings. I have reviewed the copy of the archived DA file in the  
8 *People v. Anthony and Cole* [Gonzalez] murder case BA 097736 and both of the  
9 defense attorneys' archived files and conclude that the two pages that constituted  
10 the Arthur Jones identification of filler, not Mr. Cole (Depo. Exh 36) were not  
11 contained in those files. I attended the depositions of both trial counsel Mr.  
12 Thomason and Mr. Tom and both testified that they were not provided those two  
13 pages in discovery, did not have those documents prior to trial, and first saw them  
14 during post-conviction proceedings many years later.

15 6. It is my understanding from reviewing the vast files and records of this case  
16 that Counsel Christopher Plourd for Mr. Cole in his Motion to Strike Proceedings  
17 in Imperial County, in the course of investigating the underlying facts of the  
18 Gonzalez murder case, discovered the A. Jones PS Identification Report and  
19 initialed PS Card B documents, apparently when he was provided a copy of the  
20 Gonzalez murder book different from the copy that was provided defense counsel  
21 in the Gonzalez trial. Detective Winn testified in her deposition when she said her  
22 murder book was fedexed to the DA in the Imperial County Proceedings [which  
23 started in 2007]. Winn Depo. 206-209.

24 7. I have reviewed the entire transcript of the 1995 preliminary hearing and  
25 trial in the homicide case against Messrs. Anthony and Cole and based on that  
26 review conclude that there was no reference in those proceedings to the  
27 information and evidence as described in the Corwin book that was not included in  
28

1 the article (about the detectives going on the roof with John Jones on March 28,  
2 1994, seeing the roof littered with debris including bullets and casings, and  
3 Razanskas pocketing the six bullets, or the information about Jones asking the  
4 detectives what if the [unknown shooter] were a felon in possession, or Razanskas  
5 or Winn believing Jones was not telling them everything, or to the detectives  
6 having a theory that John Jones may have been the unknown shooter). I attended  
7 the depositions of both trial counsel Mr. Thomason and Mr. Tom and both testified  
8 that they were not provided that information before the trial in any discovery.

9 8. I am familiar with the reports documenting the ballistics evidence booked in  
10 the underlying Gonzalez murder investigation and there is no reference therein to  
11 the six bullets Corwin produced to the private investigation Alfredo Rasch retained  
12 by this firm. Plaintiffs' counsel discovered by subpoena issued to Mr. Corwin prior  
13 to his deposition that he had six bullets and he subsequently explained in his  
14 deposition that they were the bullets detective Razanskas picked up on the roof on  
15 March 28, 1994. [Corwin Depo., 136:1-141:15; Razanskas Depo., 42:6-45:17]

16 9. After Corwin revealed in 2014 that he had the bullets pocketed on the  
17 rooftop, Plaintiffs' counsel obtained the bullet found in the street (Item #11) from  
18 the trial court evidence clerk and the Corwin bullets.  
19

20 I declare under penalty of perjury that the facts stated herein are of my own  
21 personal knowledge and observation. Executed in Pasadena, California.  
22

23 Dated: December 8, 2014 By /S/ Marilyn E. Bednarski  
24 Marilyn E. Bednarski  
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